IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

MFA.No. 716 of 2002(E)

OS.7/1996 of FAMILY COURT,ERNAKULAM
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APPELLANT: PLAINTIFF

S.SREEKUMAR, SADANANDALAYAM,
PAIKUZHY MURI, OOACHIRA VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM.

BY ADV. SRI.J.OM PRAKASH

RESPONDENTS: DEFENDANTS
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1. S.ANILKUMAR ALIAS MANAS,
SADHPURAM, (NEDIYATHUVEEDU) THURAYILKUNNU,
MARUTHOORKULANGARA THEKKU, KARUNAGAPPALLY P.O.,
AYANIVELIKULANGARA VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM.

2. JAMEELA, DO.DO

3. DEVADAS, DO.DO.

BY ADV. SRI.K.SURENDRA MOHAN
SRI.T.K.RAJESHKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 8/02/2007, THE COURT ON 14.2.2007 DELIVERED THE FOLLOWING:

P.R.RAMAN & S.SIRI JAGAN, JJ.

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M.F.A.NO.716 of 2002

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Dated this the 14th day of February, 2007

J U D G M E N T

Siri Jagan, J.:

The wife in a matrimonial cause is the appellant herein. She is challenging the judgment of the Family Court, Kollam in O.S.No.7/1996 whereby although her claim for value of household articles given to the husband at the time of the marriage was partly allowed, her claim for return of gold ornaments weighing 25½ sovereigns in the custody of the husband and in-laws was rejected by the family court on the ground that there was lack of evidence for proving custody of gold ornaments by the husband. The 1st respondent herein is the husband, the 2nd respondent is the sister-in-law and the third respondent is the sister-in-law's husband.

2. For appreciating the case of the parties, it is necessary to recall some of the history of the matrimony between the appellant and the 1st

respondent -husband.

3. The married life of the appellant and the 1st respondent was very short lived and not happy. The marriage was on 16.10.1995. They lived together hardly for 31 days. The matrimonial home was in the name of defendants 2 and 3. According to the appellant, even on the date of marriage, before the arrival of the relatives of the appellant at the matrimonial home, defendants removed three gold chains of the appellant and kept them in their custody. Subsequently, on 18.10.1995, the next day, 14 bangles were removed and kept with the defendants. The remaining 8 bangles, two rings and the wedding chain only were being worn by the appellant. The allegation of the appellant is that defendants 2 and 3 had the upper hand in the matrimonial home and they did not even allow her to talk to the 1st respondent husband as newly married couples do. According to her, she was not even properly given food at the matrimonial home and she was allowed to sleep in the same bed room with her husband only for the first seventeen days. She

alleged that on 17.11.1995 at 7.30 p.m. the defendants entered the appellant's room, closed the door, raised the volume of the radio and assaulted her, during which process, the wedding chain and 8 bangles were removed from the appellant's body forcibly. Hearing her cries, people from the nearby temple came to the residence and saved the appellant. The allegation of the appellant was that these gold ornaments of the appellant were taken from her for the purpose of finding money for paying off the debts of respondents 2 and 3 incurred by them for construction of a house. They also wanted the appellant to bring money from her home and threatened with physical harm if she failed to do so. The appellant was injured in the assault against her, consequent to which, she was taken to the Government hospital, where she was under treatment for 22 days. The appellant would submit that the people of the locality had formed an action council to protest against the misdeeds of the defendants against her. The appellant's mother

having died in a motor accident, she is now residing with her aged father. There is no children out of the wedlock. The 1st respondent husband is employed in the Matsyafed at Neendakara Port and is engaged in auction sale of fish, earning commission therefrom. After the above incident, she was forced to leave the matrimonial home for fear of physical harm to her and is now residing with her aged father. It is in the above background that the appellant filed the suit before the family court for return of the gold ornaments and the value of the household articles given to the 1st respondent at the time of marriage. The family court found that the appellant failed to prove that the 25 ½ sovereigns of gold ornaments belonging to the appellant was in the custody of the respondents and therefore, rejected the claim of the appellant in that regard. However, the suit was partly decreed allowing the appellant to realise a sum of Rs.13,648/- being the value of the refrigerator and household articles with interest at the rate of 6 per cent per annum from the date of the suit till

realisation of the same. In this appeal the appellant is now challenging that part of the decree in the original suit whereby the appellant's claim for return of 25 ½ sovereigns of gold has been rejected.

4. We have heard the counsel on both sides.

5. The counsel for the appellant pointed out that there were more than sufficient oral and documentary evidence before the family court to find that she had brought with her to the matrimonial home 25 ½ sovereigns of gold ornaments, that at the time of return therefrom to her parents' home, she did not have the same and therefore, the appellant had sufficiently proved the fact that the gold ornaments were appropriated by the defendants. Her case is that the value of the same was used for construction of a house for respondents 2 and 3. The appellant had examined five witnesses and marked eight documents, which according to the appellant, would be sufficient to prove the fact that her gold ornaments were in the custody of the respondents.

6. The fact that the appellant had brought with her 25½ sovereigns of gold is proved by Ext.A2 certificate issued form Sree Subrahmaniya Vilasom Karayogam, Karunagappally with whom the marriage was registered and at the time of marriage, 25 ½ sovereigns were certified to have been given to the appellant. The fact that the appellant had brought with her 20 sovereigns of gold ornaments to the matrimonial home is also admitted by the 1st respondent while giving evidence. But his contention is that he never had any custody or control over the gold ornaments and the same were kept by the appellant herself. Respondents 2 and 3 also denied having received the gold ornaments.

7. As we have already mentioned, the fact that the appellant brought with her to the matrimonial home 25 ½ sovereigns of gold is sufficiently proved by Ext.A2. There is the admission of the 1st respondent also in respect of at least 20 sovereigns. But regarding the removal of 3 chains on the date of marriage, viz., 17.10.1995 and removal of 14 bangles on 18.10.1995,

from the appellant there is hardly any convincing evidence to the effect that these were taken by the respondents, except the oral evidence of the appellant. The appellant had examined two independent witnesses, PW3 and PW4, who would support her case at least to the extent of 8 bangles. However, the family court disbelieved those witnesses as tutored witnesses.

8. For the following reasons, we cannot agree with the conclusions reached by the family court in respect of the 8 bangles. PW4, one Nirmala, is a resident of the locality where the appellant's matrimonial home is situated. PW4 deposed that on 17.11.1995, ie. the date on which the assault on the appellant is stated to have happened, they had travelled together in a bus sitting on the same seat while she was going to the temple adjacent to the appellant's matrimonial home. PW4 categorically deposed that there were a chain and 8 to 10 bangles on the arms of the appellant. They together alighted from the bus at the busstop near the house of the appellant's husband. Thereafter,

PW4 went to the nearby temple for worshipping. While she was there, she heard cries from the matrimonial home of the appellant, but she did not pay much attention to that. Later when she was returning from the temple, people had gathered in front of the appellant's matrimonial home, she was informed that the commotion she heard was from the house of the appellant and she heard that the woman who was brought in marriage to that house (the appellant) was beaten. On being informed that the appellant was then at the neighbour's house, she went there to see the appellant. PW4 categorically deposed that when she saw the appellant at the neighbour's house, the appellant was wearing a torn 'nighty' and on her body, no gold ornaments were seen. According to her, many people of the locality had assembled there. In the hands of the appellant there were abrasions and contusions. Her hearsay evidence is that the appellant used to be tortured for gold ornaments by the respondents since the day after the marriage. She also stated that she saw about 8 to 10 bangles

on the hands of the appellant while in the bus, a little while earlier to the incident, which were absent when she met her after the assault.

9. The above evidence of PW4 was disbelieved by the family court primarily on the ground that PW3 who is stated to have taken the appellant from her matrimonial home to the neighbouring house after the assault, did not speak anything about the absence of the bangles on the hands of the appellant and no questions were put to him in respect of the same. The family court opined that PW3 was the first to see that appellant after the incident and he led her to the neighbouring house by holding her hand. The reasoning adopted by the family court was that if there were no bangles on the appellant's hand, PW3 would have noticed the same and in the evidence of PW3, there is no whisper about that. On this ground, the family court came to the conclusion that PW4 is a tutored witness.

10. We are unable to subscribe to the view taken by the family court in this regard. PW4 was

extensively cross-examined by the counsel for the 1st respondent as well as respondents 2 and 3. PW4 was a summoned witness. This is clear from the first answer elicited by the counsel for the 1st respondent himself at the time of cross examining PW4. The counsel for the 1st respondent tried to attribute bias to the PW4 by suggesting that she is the daughter of the appellant's sister-in-law's father's brother, which was categorically denied by PW4. She further added that she had no kind of relationship with the appellant except the fact that they belong to the same locality. In fact in chief examination, PW4 did not give the number of bangles she saw on the hands of the appellant. But in cross examination by the counsel for the 1st respondent it was elicited that there were 8 to 10 bangles on the hands of the appellant when she saw her in the bus. The counsel for respondents 2 and 3 also tried to shake the evidence of PW4 by cross examining her at length. But she stood her ground well and absolutely nothing could be brought out to discredit the evidence of PW4.

11. Now the primary reason on which the family court found the evidence of PW4 to be unacceptable is the alleged fact that no questions were put to PW3 regarding the absence of bangles on the hands of the appellant, although he went there to lead the appellant by hand to the neighbour's house after the assault on her. Therefore, we carefully went through the evidence of the PW3. According to us, the evidence of PW3 corroborates the evidence of PW4. He would say that hearing the cries from the appellant's house, he went there and although he pressed the calling bell, nobody came out and after some time, the 2nd respondent came out and scolded him for poking his nose into their family affair. Thereafter, through another door the appellant came out from the house and requested him to save her. Therefore, he led the appellant to the nearby provision store. The owner of the provision store directed him to take her to the house attached to the provision store. He stated that there were abrasions on the skin on the hand of the appellant and blood was just oozing

therefrom. We feel that in so far as PW3 did not have any occasion to see the appellant before the assault, his saying about the bangles would not arise. On the other hand he categorically deposed that on the hands of the appellant he saw injuries like the ones that may be caused by removing bangles. He further said that the appellant told him that the injuries were caused while removing the bangles, which answer was in fact elicited by cross examination of the 1st respondent. PW3 was also subjected to cross examination which was withstood by him admirably. Although the counsel for the respondents would want us to disbelieve the evidence on the ground that in the O.P. ticket produced by the appellant herself only contusion is mentioned and no abrasions, we do not find the same to be serious enough to disbelieve the evidence of PW3 and PW4 especially since those abrasions were not serious enough to attribute aberrations in their evidence so as to disbelieve their evidence in a case where the standard of proof is only that of preponderance of probability.

12. We find that the depositions of PW3 and PW4 are in perfect unison and inspire confidence. We do not find anything to conclude that either of them was a tutored witness. On the other hand, their evidence has the ring of truth and there is no circumstance whatsoever to disbelieve their evidence. We are therefore, satisfied that the family court went wrong in disbelieving their evidence that too on a totally wrong reading of the evidence of PW3.

13. Since we are inclined to believe the evidence of PW3 and PW4, the same categorically proves that before the assault the appellant had at least 8 bangles on her hand which was not there when she came out of the house. In the absence of any explanation for the same from the side of the respondents, we have no hesitation to hold that before the appellant left her matrimonial home, the same was forcibly removed from her hands by the respondents. In that view, the respondents are liable to return either the 8 gold bangles or the value thereof.

14. Of course, there is no evidence regarding the weight of the bangles. But taking into account the entire facts and circumstances, we are inclined to take the weight of each bangle as one sovereign each, especially in view of the uncharitable stand taken by the respondents in the case.

15. Accordingly, we modify the decree of the family court directing the respondents to return to the appellant 8 sovereigns of the gold or to pay her an amount of Rs.51,200/- being the value of the same at the rate of Rs.6500/- per sovereign which is the prevailing market rate, within one month from today in addition to the payment of Rs.13,648/- with interest, as value of the household articles as directed by the court below. Failure of either to return the gold or pay the amount would entail payment of interest on the amount at the rate of 9% per annum from today till date of payment. We also direct that if the Rs.13,648/- has not already been paid that also would carry interest @ 9% instead of 6% as directed by the lower court.

The appeal is allowed to the above extent. The respondents will also pay to the appellant costs of Rs.10,000/-.

Sd/-
P.R.RAMAN, JUDGE

Sd/-
sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.

P.R.RAMAN

&

S.SIRI JAGAN, JJ.

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M.F.A.NO.716 of 2002

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J U D G M E N T

February, 2007